

Gina McCarthy
EPA Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Office of the Administrator, 1101A
Washington, DC 20460

Administrator Shawn M. Garvin
USEPA, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Administrator Susan Hedman
USEPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Inspector General Arthur A. Elkins Jr.
Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue, N.W. (2410T)
Washington, DC 20460

July 1, 2015

Re: DuPont RCRA Financial Assurances, Chemours Spin-Off

Dear EPA Administrator McCarthy, Region 3 Administrator Garvin, Region 5 Administrator Hedman, and Inspector General Elkins,

On July 1, 2015 Chemours is expected to begin trading on the NYSE as a separate and independent company. This company will take over DuPont's chemical division and absorb much of its related environmental liabilities. On behalf of the roughly 100,000 mid-Ohio Valley residents who have been exposed to harmful levels of C-8 (also known as perfluorooctanoic acid or PFOA) from DuPont's Washington Works plant near Parkersburg, WV, we are writing to express our concern with this transaction. In particular, we are extremely troubled by the lack of assurances we have seen that the new company, Chemours, has adequately accounted for the liabilities it will inherit from DuPont in connection to C-8 contamination. We ask that the EPA pay special attention to this transaction and take steps to ensure that Chemours meets the financial assurance requirements under the Resource Conservation and Recovery Act (RCRA) in Parkersburg and at the other facilities affected by this spin-off. Without such financial assurances, there is a risk that the costs of cleaning up Chemour's mess could unjustly fall on taxpayers.

Background

DuPont used C-8 at the Washington Works plant [EPA ID#: WVD045875291] in Parkersburg, West Virginia for more than 50 years. In 2001, it was revealed that C-8 had contaminated drinking water and the local population in the mid-Ohio Valley, and an unprecedented study of nearly 70,000 residents revealed that C-8 exposure has a probable link to six diseases including kidney cancer, testicular cancer, thyroid disease, ulcerative colitis, hypercholesterolemia, and pregnancy-induced high blood pressure (including preeclampsia). The EPA now refers to C-8 as a “likely carcinogen.”

As a result of this contamination, DuPont was subject to both EPA action (*In the Matter of E.I. du Pont de Nemours*) and a private class action lawsuit (*Leach, et al v. E. I. DuPont de Nemours and Co.*), both of which settled in 2005. As part of the EPA action, DuPont was required to implement two supplemental environmental projects at a cost of six million two hundred fifty thousand dollars (\$6,250,000.00) and pay ten million two hundred and fifty thousand dollars (\$10,250,000.00) in civil penalties. DuPont agreed to new Consent Orders with the EPA related to this contamination in 2006 and 2009.

The 2005 settlement of the class action lawsuit against DuPont included commitments by DuPont to fund a \$235 million medical monitoring fund, to pay for the clean up of local drinking water, and to compensate those class members harmed by C-8. In the ten years since that settlement, DuPont has fallen far short of these commitments. The medical monitoring program was only set up in September of 2014 and to date only \$357,038.67 of the \$235 million promised in medical monitoring has been provided to victims of the C-8 contamination. To date there are at least 3,500 uncompensated individuals who have diseases to which an Independent Science Panel found a probable link to C-8. Because as many as 100,000 community members could need medical treatment as a result of the contamination, future medical monitoring payouts are likely to substantially increase.

Although DuPont acknowledges these liabilities in its Chemours SEC form 10, it is our concern that its estimates understate the extent of potential liabilities. According to its public filings the Chemours business represents less than 20% of DuPont’s net sales but represents over 60% of DuPont’s remediation accrual. While Chemours reports an accrual of \$295 million in environmental liabilities as of December 2014, it admits that potential liability could be as high as \$650 million more than that. As elaborated in a June 15, 2015, letter to the SEC, we have reason to believe that the potential liability could be significantly higher than that. It is our concern that transferring these liabilities to Chemours could further jeopardize the fulfillment of these commitments in Parkersburg and other similarly affected communities if Chemours does not have sufficient funds to pay its commitments.

Every day that passes without fulfillment of DuPont’s promises puts more residents of the mid-Ohio Valley at risk of serious illness resulting from C-8 contamination.

RCRA Financial Assurances

The DuPont Washington Works facility that will be transferred to Chemours is subject to a RCRA permit and was issued the Corrective Action portion of its site permit in 1989. Corrective action is still underway.

Approved long-term corrective actions under RCRA require assurances of financial responsibility from the offending permit-holders (*see* 42 U.S.C. § 6924(u)). These financial assurances are necessary to ensure that permitted companies complete these actions and taxpayers are not unduly burdened with cleanup costs through federal Superfund or state cleanup programs. Notably, the requirements for financial assurances do not apply solely to the immediate permitted facility, but also to the surrounding area when necessary to protect human health and the environment (*see* 42 U.S.C. § 6924(v)). This is particularly relevant in places like Parkersburg where many of the community members who were exposed to drinking water contaminated with C-8 did not work in the DuPont facility.

EPA's guidance on financial assurance instructs that "it is important for regulators to require facility owners and operators to obtain financial assurance when the companies are financially healthy, so that resources are set aside in the event a company hits a financial decline." (EPA Interim Guidance on Financial Responsibility Subject to RCRA Corrective Action, http://www.epa.gov/osw/hazard/correctiveaction/resources/guidance/gen_ca/finan9-03.pdf (emphasis added)). However, during the period that a company is financially healthy, EPA has discretion under RCRA to determine *when* corrective measures are necessary and *how much* financial assurance is required. EPA should exercise this discretion with regards to the RCRA permit at Washington Works in light of the impending change in ownership.

Seeking new financial assurances from Chemours is consistent with the EPA's priorities. On May 28, 2015, the EPA Office of Inspector General (OIG) announced its plan to research EPA's progress on reducing taxpayer liabilities through financial assurances under RCRA and CERCLA. A special emphasis of this investigation is on companies with multiple facilities and sites, and determining whether all environmental liabilities are included in financial assurance evaluations. DuPont is one of the world's largest chemical manufacturers and will be passing multiple facilities and sites to Chemours. DuPont also has a long history of environmental contamination and many of these sites are also subject to ongoing RCRA and CERCLA actions. As such, this transaction should be of particular interest to the EPA and part of the OIG's investigation.

Now is the time for the EPA to Act

Now is the best time for the EPA to reevaluate the corrective measures being taken at Washington Works and redouble efforts to ensure that there are adequate financial assurances. The legacy contamination from the DuPont Washington Works plant, ongoing corrective action requirements, the EPA OIG's new emphasis on financial assurance compliance, and the impending change in ownership are all factors that make it timely to newly scrutinize and demand sufficient financial assurances from Chemours.

In addition to demanding new financial assurances from Chemours under the RCRA permit at Washington Works, we respectfully ask that EPA produce:

1. All EPA Superfund PRP letters to DuPont
2. All DuPont RCRA Corrective Action sites; the compliance status of their financial assurance requirements; the amount of financial assurance demonstrated; and the financial mechanisms to meet those obligations.
3. The status of the transfer of all EPA permits and approvals from DuPont to Chemours.

EPA should rely on this information as part of its analysis of RCRA financial assurances at Washington Works. It should also provide this information to the undersigned so that we may better understand the full extent of Chemours' potential environmental liabilities. With this information, the undersigned and other communities potentially affected by the Chemours spin-off may better advocate for stronger oversight and help to ensure that DuPont's promises and obligations to those communities are fulfilled.

Sincerely,

Dr. Paul Brooks
Advisor, Keep Your Promises DuPont

Melanie Benesh
Staff Attorney, Environmental Working Group